

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7611

Petition of Chittenden County Solar Partners, LLC,)	Technical Hearing
pursuant to 30 V.S.A. § 248, for a certificate of)	held at Montpelier, Vermont
public good authorizing the installation and)	August 13, 2010
operation of a 2.2 MW solar electric generation)	
facility located at Dubois Drive, South Burlington,)	
Vermont)	

Order entered: 9/15/2010

HEARING OFFICER: Edward McNamara, Esq.

APPEARANCES: John Beling, Esq.
for Vermont Department of Public Service

Andrew Raubvogel, Esq.
Elizabeth Caitlin, Esq.
Shems Dunkiel Raubvogel & Saunders PLLC
for Chittenden County Solar Partners, LLC

Judith Dillon, Esq.
for Vermont Agency of Natural Resources

I. INTRODUCTION

This case involves a petition filed by Chittenden County Solar Partners, LLC ("CCSP") on April 2, 2010, requesting a certificate of public good ("CPG") pursuant to 30 V.S.A. § 248, authorizing the installation and operation of a 2.2 MW solar electric generation facility in South Burlington, Vermont (the "Project"). In this Proposal for Decision, I recommend that the Vermont Public Service Board ("Board") approve the proposed Project and issue a certificate of public good to CCSP authorizing construction of the proposed Project.

II. PROCEDURAL HISTORY

On April 2, 2010, CCSP filed a petition for a CPG, pursuant to 30 V.S.A. § 248, requesting approval to install and operate a solar electric generation facility in South Burlington, Vermont.

On April 30, 2010, I held a prehearing conference at the Board's hearing room in Montpelier, Vermont. Also on April 30, 2010, the City of South Burlington ("South Burlington") filed a letter requesting intervenor status under criteria 30 V.S.A. § 248(b)(1) and (5). During the prehearing conference, I granted permissive intervention to South Burlington under the two criteria.

On June 1, 2010, a site visit was held at the proposed project site in South Burlington, Vermont, and a public hearing was held at the South Burlington High School. Four members of the public provided comments at the public hearing. Members of the public stated support for renewable energy and also raised questions and concerns with regard to landscape screening, the impact on wildlife, night-time lighting, and decommissioning.

On June 25, 2010, CCSP, the Vermont Department of Public Service ("Department"), the Vermont Agency of Natural Resources ("ANR"), and South Burlington filed a Stipulation and Proposed Findings of Fact and Order in which all the parties agreed that the Board should issue a CPG with conditions.¹ Also on June 25, 2010, CCSP filed supplemental prefiled testimony and exhibits.

In an August 10, 2010, memorandum, I identified questions regarding the petition and requested that CCSP be prepared to answer them at the technical hearing.

A technical hearing was held on August 13, 2010, in the Board's hearing room in Montpelier, Vermont. At the hearing, the prefiled testimony and exhibits of CCSP were entered into evidence.

1. The Stipulation states that the parcel of land to be utilized for the Project is covered by an Act 250 permit and states that CCSP will seek a determination from the District Commission or District Coordinator as to whether the Project requires an amendment to the Act 250 permit. The Stipulation further states that CCSP will seek an Act 250 permit amendment if necessary, but will ensure that it complies with the decision made by the District Commission, District Coordinator, or relevant appellate body. Accordingly, this issue is not addressed in this Proposal for Decision.

III. FINDINGS

Based on the substantial evidence of record, I hereby report the following findings to the Board in accordance with 30 V.S.A. § 8.

Background and Project Description

1. CCSP is a Vermont limited liability corporation with its principal place of business at 23 Pinnacle Drive, South Burlington, Vermont. Michael/Goldsmith pf. at 1.

2. The proposed project is a 2.2 MW solar electric generation facility located on approximately 22 acres of an approximately 32-acre leased site. The leased site is part of a 53-acre undeveloped parcel of land located at the eastern end of Dubois Drive, to the south of Meadowland Drive and north of Van Sicklen Road in South Burlington, Vermont. Michael/Goldsmith pf. at 3-4; exh. SBSF-PM/DG-12.

3. CCSP proposes to install the following components: (1) approximately 383 trackers; (2) approximately 9,192 individual polycrystalline solar photovoltaic panels of 240 watts each; (3) electrical lines in underground conduit connecting the panels to the inverters and switch gear enclosure; (4) distributed inverters on each array; (5) four 500 kVA transformers; and (6) underground electrical lines, buried at least 18 inches deep, connecting the Project to Green Mountain Power Corporation's ("GMP") distribution system. Michael/Goldsmith pf. at 8; Michael/Goldsmith supp. pf. at 2-3; exhs. SBSF-PM/DG-3 and 10-12. *See* exh. SBSF-PM/DG-3.e (depicting similar solar arrays).

4. Each tracker-mounted set of solar panels will have a maximum height of nineteen feet 1-3/4 inches from ground level when the tilt of the tracker is at the highest. The trackers will be placed in a grid, spaced at approximately 50-foot intervals from center to center to maximize use of the land and minimize shading from the adjacent trackers. The trackers will use a small electric motor to operate a hydraulic system that will cause the tracker to rotate (yaw) and tilt up and down to maintain perpendicular alignment with the sun as the sun changes angles throughout each day and seasonally. Michael/Goldsmith pf. at 9; exh. SBSF-PM/DG-3b and 12.

5. Each solar array will be composed of twenty-four (24) 240-watt panels. The panels will be mounted on trackers, which themselves will be anchored into the ground using threaded earth

anchors (unless ledge is encountered, in which case precast concrete footings of approximately four feet in diameter would be utilized). Each anchor is approximately ten inches in diameter and will be driven to a depth of approximately ten feet. Michael/Goldsmith pf. at 8-9; *see* exh. SBSF-PM/DG-3a.

6. CCSP will install 6 kW inverters on each solar array, located underneath where the panels are mounted on the trackers. The distributed inverters are each approximately two feet wide by 1.5 feet high by ten inches deep. Michael/Goldsmith supp. pf. at 2.

7. The Project will include four 500 kW transformers, which will be housed in enclosures approximately fifty inches tall by ninety inches wide by fifty-three inches deep. The transformers will be located such that there is one transformer per quadrant of the Project. Each transformer will be located in the approximate center of its quadrant on a concrete pad and surrounded by an 8-foot high solid cedar fence. Michael/Goldsmith supp. pf. at 3-4.

8. Electrical output from the transformers will be carried by underground electrical conduit and interconnect with the GMP system via a new three-phase power vault on Meadowland Drive. The route will follow a ten-foot-wide utility easement through the northeastern corner of the Project site, where there are no Class 2 wetlands. All on-site low-voltage electrical lines will be buried a minimum of 18 inches deep, and all on-site medium-voltage lines will be buried a minimum of 48 inches deep. Michael/Goldsmith supp. pf. at 2 and 5.

9. The nameplate capacity of the proposed project is 2.2 MW DC, at Standard Test Conditions, prior to conversion to AC. The expected net energy output of the proposed Project (after DC to AC conversion) is 3,000,000 kWh per year. This is the equivalent of the annual electricity consumption of over 400 homes, based upon the average residential electricity use in Vermont of 7,200 kWh/year per household. Michael/Goldsmith pf. at 6.

10. The proposed Project will be surrounded by a six-foot-high ornamental steel mesh fence for security and safety. The fence panels will be set four to six inches above ground to allow for wildlife passage. The fence will be fifty feet from the center of the nearest solar array on the northern and southern boundaries of the Project. This will provide sufficient clearance for the use of agricultural mowing and baling equipment around the arrays. Michael/Goldsmith supp. pf. at 3-4; exhs. SBSF-PM/DG-12 and 13a-b; tr. 8/13/10 at 18-20 (Michael).

11. The layout allows for a pedestrian easement running along the eastern and southern boundaries of the Project site. Michael/Goldsmith pf. at 11; Michael/Goldsmith supp. pf. at 9; exh. SBSF-PM/DG-12; Stipulation at 2.

12. CCSP will use motion-activated security lighting at the site in the form of low-wattage directional LEDs, which will be shielded so that the light is directed downwards. Based upon concerns expressed at the public hearing and from neighbors, CCSP will install this lighting such that it will be directed inward — toward the center of the Project — and will comply with the Vermont Outdoor Lighting Guide. Michael/Goldsmith supp. pf. at 10-11; exh. SBSF-PM/DG-16.

13. Access to the site will be through the existing access road off of Dubois Drive. The access road is currently an unimproved farm road, and Project plans call for structural improvements to the road so that it can support heavier construction and delivery vehicles. In accordance with an agreement reached with neighbors of the Project, the Petitioner will remove any improvements made to the access road once construction is complete, insofar as the removal is consistent with any stormwater or wetlands permits obtained by the Petitioner. Michael/Goldsmith pf. at 11; Michael/Goldsmith supp. pf. at 11.

14. The proposed Project is being developed under the Sustainably Priced Energy Enterprise Development ("SPEED") standard-offer program. In January 2010, John P. Larkin signed a standard-offer contract with the SPEED Facilitator for the proposed project. On March 30, 2010 Mr. Larkin assigned the standard-offer contract to CCSP. The standard-offer contract provides for the sale of the proposed Project output and other attributes, including the renewable energy credits ("RECs"), at a fixed price of \$0.30 per kWh for a period of 25 years. Michael/Goldsmith pf. at 4; SBSF-PM/DG-2a-b.

Orderly Development of the Region

[30 V.S.A. § 248(b)(1)]

15. The proposed project will not unduly interfere with the orderly development of the region, with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of municipal legislative bodies, and the

land conservation measures contained in the plan of any affected municipality. This finding is supported by findings 16 through 18, below.

16. The City of South Burlington has signed a Stipulation recommending that the Board issue an order in this Docket allowing the construction of the Project. Stipulation at 1.

17. The installation of the Project on the site is compatible with the nearby land uses, which includes residential, light commercial/industrial, and conservation uses. Michael/Goldsmith pf. at 17.

18. The Project is not contrary to any land conservation measures contained in the South Burlington Comprehensive Plan or the Chittenden County Regional Plan. Raphael pf. at 7-8.

Need for Present and Future Demand for Service

[30 V.S.A. § 248(b)(2)]

19. CCSP has executed a standard-offer contract. No part of the facility is financed directly or indirectly through investments, other than power contracts, backed by Vermont electricity ratepayers. Michael/Goldsmith pf. at 17; exh. SBSF-PMDG-2a, b.

Discussion

Pursuant to 30 V.S.A. § 8005(b)(8):

a demonstration of compliance with subdivision 248(b)(2) of this title, relating to establishing need for the facility, shall not be required if the facility is a SPEED resource and if no part of the facility is financed directly or indirectly through investments, other than power contracts, backed by Vermont electricity ratepayers.

Accordingly, ASF does not need to demonstrate compliance with this criterion.

System Stability and Reliability

[30 V.S.A. § 248(b)(3)]

20. The proposed Project will not adversely affect system stability or reliability. This finding is supported by findings 21 through 23, below.

21. The Project will interconnect with GMP's distribution system at 12.47 kV via a new three-phase-power underground vault on Meadowland Drive. Electrical and telephone conduits

necessary to serve the Project will extend from the underground vault to the northeastern corner of the Project site. Michael/Goldsmith supp. pf. at 3, 5.

22. GMP has stated that:

it is likely that the Project interconnection can be designed to not cause an adverse effect on system stability and reliability, provided that [the Petitioner] agrees to implement and pay for the system modifications and protective equipment necessitated by the Project as identified in the Green Mountain Power System Impact Study or as agreed to in any Interconnection Agreement between Green Mountain Power and the Project Developer.

Exh. SBSF-PM/DG-4c.

23. CCSP will pay the costs of any modifications to the electrical system that are required to interconnect the Project to GMP's distribution system. Michael/Goldsmith pf. at 18.

Discussion

CCSP has proposed that the Board include a condition in a CPG, if issued, which states: "Prior to commencement of construction, CCSP shall submit the GMP System Impact Study to the Board for approval, after review and comment by the Department." The Stipulation further provides that CCSP may seek permission from the Board to commence construction activities prior to approval of the System Impact Study ("SIS"), provided that the construction activities do not involve the installation of any electrical equipment related to the interconnection of the Project with GMP's distribution system.

With respect to construction prior to approval of the SIS, in this Proposal for Decision I am recommending that the Board require a decommissioning fund be in place prior to commencement of construction; if such a condition were in place, it should mitigate any concerns with construction of components of the Project that do not involve electrical equipment related to the interconnection of the Project, provided that CCSP request permission from the Board prior to any construction. Accordingly, I recommend that the Board include the following condition to ensure that the Project satisfies Section 248(b)(3): "Prior to commencement of construction, CCSP shall submit the GMP System Impact Study to the Board for approval, after review and comment by the Department. CCSP may seek permission from the Board to commence construction activities prior to approval of the System Impact Study, provided that the

construction activities do not involve the installation of any electrical equipment related to the interconnection of the Project with GMP's distribution system."

Economic Benefit to the State

[30 V.S.A. § 248(b)(4)]

24. The proposed Project will result in an economic benefit to the state and its residents. The Project will contribute to the local and state economy through the use of in-state suppliers, contractors, and consultants, as well as the payment of local and state property taxes. The total development and capital cost of the Project is approximately \$12 million, the operating costs are approximately \$140,000 per year, and the property taxes are expected to be approximately \$60,000 per year. Michael/Goldsmith pf. at 18-19.

**Aesthetics, Historic Sites, Air and Water Purity,
the Natural Environment and Public Health and Safety**

[30 V.S.A. § 248(b)(5)]

25. The proposed Project will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment and public health and safety. This finding is supported by findings 26 through 90, below, which are the criteria specified in 10 V.S.A. §§ 1424(a)(d) and 6086(a)(1)-(8)(a) and (9)(k).

Outstanding Resource Waters

[10 V.S.A. § 1424(a)(d)]

26. There are no outstanding resource waters located on or near the Project. Crary pf. at 4-5; exh. CCSP-AC-2.

Air Pollution

[10 V.S.A. § 6086(a)(1)]

27. The proposed Project will not result in undue air pollution. This finding is supported by findings 28 through 34, below.

28. The operational phase of the Project will not produce air emissions. Cooke pf. at 3.

29. Dust is the only air pollutant expected to be produced during the construction phase of the Project. There will not be undue generation of dust for the following reasons: (1) the construction entrance will be stabilized; (2) the access drive will be a gravel surface; (3) there will be limited tree and brush clearing; (4) there will be limited soil disturbance associated with installation of the solar panel support structures, as these structures will be pile driven; (5) the installation of the perimeter security fence will involve limited soil disturbance, as the fence posts will be pile driven; and (6) there will be only limited, temporary soil disturbance associated with the installation of underground conduit. Cooke pf. at 3.

30. Water will be applied to control dust during the construction phase as necessary. Cooke pf. at 3.

31. Operational noise produced by the Project will be limited to sound produced by the trackers, inverters, and transformers. Michael/Goldsmith pf. at 17, 20; Cooke pf. at 4.

32. The Project will produce noise only during the day, with the exception of the sound of the trackers aligning the panels, after sunset, into position to catch the next day's first sunlight. The movement of the trackers will be staggered, such that only eight trackers across the site will be operating simultaneously at any one time. Michael/Goldsmith pf. at 20-21.

33. The City of South Burlington's zoning regulations include the following quantitative noise standards that apply between the hours of midnight and 8 a.m.: a 45 dBA (one-hour average) noise limit at any residential property line; and a 60 dBA (one-hour average) noise limit at any commercial property line. Michael/Goldsmith pf. at 22.

34. The expected sound levels from the trackers, inverters, and transformers, cumulatively, will be: approximately 44.5 dBA to the north of the Project, which consists of commercial and industrial land uses; approximately 44.5 dBA to the east of the Project, which consists of undeveloped land; approximately 34 dBA to the south of the Project, which consists of undeveloped land; and approximately 28 dBA to the west of the Project, which consists of residential land uses. The Project will comply with the noise standards established by the City of South Burlington and residential noise guidelines established by the U.S. Environmental Protection Agency. Michael/Goldsmith pf. at 20-22; tr. 813/10 at 11 (Michael).

Water Pollution

[10 V.S.A. § 6086(a)(1)]

35. The proposed Project will not result in undue water pollution. Crary pf. at 6. This finding is further supported by findings 36 through 68, below, and by the specific findings under the criteria of 10 V.S.A. §§ 6086(a)(1)(A) through (G), below.

Headwaters

[10 V.S.A. § 6086(a)(1)(A)]

36. The Project will meet applicable health and Environmental Conservation Department criteria regarding reduction of the quality of the ground or surface waters. This finding is supported by findings 37 through 39, below.

37. The Project is located within a headwaters area as the Project site lies within lands draining 20 square miles or less. Crary pf. at 6.

38. The operational phase of the Project will not involve discharge of any pollutants and will not impact ground- or surface-water quality. Crary pf. at 7.

39. The Project has obtained a construction-phase stormwater discharge permit, which requires a site-specific erosion prevention and sediment control ("ESPC") plan during construction. The conditions contained in the stormwater discharge permit, as well as the ESPC plan, will ensure that ground- and surface-water quality are not impacted by Project-related construction activities. Crary pf. at 6-7; exh. SBSF-PM/DG-15.

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

40. The proposed Project will meet applicable Department of Health and Department of Environmental Conservation regulations for the disposal of wastes, and will not involve the injection of waste materials or any harmful or toxic substances into ground water or wells. This finding is supported by findings 41 through 46, below.

41. The Project does not involve any domestic waste or potable water supply needs; consequently, the Project does not require a state Water Supply and Wastewater Disposal Permit. Cooke pf. at 4.

42. The Project does not involve disposal of wastes or injection of any material into ground water or wells. Cooke pf. at 4.

43. Waste associated with construction will be disposed of in accordance with all applicable rules and regulations, in approved landfills. No solid wastes are expected to be generated during the operational phase of the Project. Cooke pf. at 4.

44. The total new impervious surface associated with the Project is less than one acre. This amount of new impervious surface does not require an operational-phase stormwater discharge permit pursuant to 10 V.S.A. § 1264. Cooke pf. at 4.

45. There will be relatively few permanent changes to the Project site, and generally no permanent changes to the site's native soils profile, slope, grade, or surface vegetation. Consequently it is expected that there will be no measurable changes to the site's post-development hydrology. The stormwater-runoff quality and quantity should remain essentially the same as it presently exists. Cooke pf. at 5.

46. The Project has obtained a stormwater construction permit from ANR. Exh. SBSF-PM/DG-15.

Water Conservation

[10 V.S.A. § 6086(a)(1)(C)]

47. The Project will not require the use of water during the construction phase (unless required for dust control) or during the operational phase (except for possible occasional cleaning of the solar panels). The water that may be required will be brought to the site on small maintenance vehicles. Cooke pf. at 6.

Floodways

[10 V.S.A. § 6086(a)(1)(D)]

48. The Project will not increase the peak discharge of any downstream river or stream and will not endanger the health, safety, or welfare of the public or riparian owners during flooding.

The Project site, utility interconnection, and access road are not within a floodway, floodway fringe, or fluvial erosion hazard area. Crary pf. at 7-8; exh. SBSF-AC-2 at 7.

Streams

[10 V.S.A. § 6086(a)(1)(E)]

49. The Project will not have an undue adverse impact on any streams. The closest stream to the Project site is Muddy Brook, which is approximately 300 feet to the southeast of the parcel boundary, and even further from the proposed array, access road, and interconnection point. Crary pf. at 8; exh. SBSF-AC-2; Cooke pf. at 8-9.

Shorelines

[10 V.S.A. § 6086(a)(1)(F)]

50. The Project is not located on a shoreline of a lake, pond, reservoir or river. Crary pf. at 10.

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

51. The Project will not have an undue adverse impact on wetlands, and will comply with the rules related to significant wetlands. This finding is supported by findings 52 through 63, below.

52. There are approximately 18.5 acres of Class Two wetlands within the western and southern portions of the Project parcel. Crary pf. at 11; exh. SBSF-AC-2.

53. A portion of the Project components will be sited within approximately 2,600 square feet of Class Two wetland and 24,300 square feet of Class Two wetland buffer. The majority of the Project components will be located outside the 50-foot buffer of the wetlands. Crary pf. at 12; exh. SBSF-PM/DG-12.

54. Some arrays will be placed within a finger of a Class Two wetland, located approximately in the center of the western side of the Project. This emergent wetland finger and its buffer are already cleared and regularly disturbed by annual mowing for hay; consequently, wetland functions and values in this area are limited compared to the Class Two wetland from

which the finger extends. The Project's direct impact on this area will consist of the placement of solar panel support anchors to a depth of 10 feet. The support anchors are each ten inches in diameter; accordingly, the placement of these anchors in the wetland and buffer will have a minimal impact. In addition, the wetland will also be impacted by placement of perimeter security fencing, which would also result in minor direct impacts. Crary pf. at 12-13; exh. SBSF-PM/DG-12.

55. CCSP will obtain a Conditional Use Determination ("CUD") from ANR authorizing these impacts prior to undertaking any construction that would impact the wetlands. Crary pf. at 13; Stipulation at 2-3.

56. The access road is adjacent to the Class Two wetland. Work associated with improvements to the access road consists of surfacing the access road with gravel or some other permeable surface and installation of any drainage structures that may be necessary. Vegetative clearing in the area of the access road is not expected to be required. If impacts to the wetlands adjacent to the access road are necessary in undertaking improvements to the road, CCPS will obtain a CUD for any encroachments to the Class Two wetland and buffer. Crary pf. at 13; Stipulation at 2-3.

57. The underground electrical conduit and interconnection with the GMP distribution system of Meadowland Drive will not cross any Class Two wetlands. Exh. SBSF-PM/DG-12.

58. All buffers on the Project parcel that are not currently forested will be allowed to re-vegetate either naturally or by restorative plantings. This buffer restoration will be an improvement over existing conditions, as the field in which the Project is located is currently mowed annually or biannually, and the mowing prevents natural reforestation. Crary pf. at 11.

59. During the life of the Project, vegetation maintenance within the wetland buffer will be limited to cutting of trees or shrubs that have the potential to cause shading of the photovoltaic array, and would be limited to those areas that are currently under shrub cover or open field, not existing trees. Additionally, CCSP will not clear any of the existing vegetation located to the west of the proposed perimeter fence. Crary pf. at 12; Michael/Goldsmith supp. pf. at 11; exh. SBSF-PM/DG-16.

60. To ensure protection of wetlands, wetland buffers, and the natural communities associated with these wetlands, CCSP will not undertake any improvements to the pedestrian easements proposed along the southern and eastern boundaries of the site, except for improvements associated with the Project's access road, unless such improvements are approved by ANR. Additionally, CCSP will ensure that language requiring ANR's approval for any improvements to the pedestrian easements is included in any easement agreement.

Michael/Goldsmith supp. pf. at 9; Stipulation at 2.

61. Approximately 11,170 square feet of Class Three wetland is mapped within the Project site. The Class Three wetland consists largely of emergent depressions within the mowed field that may gather and retain precipitation for a sufficient duration to create wetland hydrology. These depressions provide minimal wetland function and value. The perimeter of the array will impact two of these Class Three wetlands; however, direct impacts will be limited to placement of ten-inch diameter support poles and perimeter fencing. Total direct impacts to the Class Three wetlands are expected to be less than five square feet. There will be minimal direct impacts, no modification of wetland type, and no net decrease in wetland function and value. Consequently, the Project will not have an adverse impact on Class Three wetlands. Crary pf. at 15.

62. Some of the trenching for placement of the electrical and telecommunications conduit on an adjacent parcel will take place in a Class Three wetland. A Clean Water Act Section 404 permit will be obtained if necessary, based upon field conditions and consultations with the U.S. Army Corps of Engineers. The Project has been designed to meet the conditions of the U.S. Army Corps of Engineers Vermont State Programmatic General Permit. Crary pf. at 16; exh. SBSF-PM/DG-12.

63. Placement of the solar panels within wetlands, or adjacent to wetlands, will not adversely affect existing wetland vegetation. The solar panels will rotate throughout the day and not cause a permanent shadow zone. Spacing of the arrays should allow adequate sunlight to maintain the existing emergent vegetation cover that characterizes the wetlands within the array. Crary pf. at 15.

Discussion

The Stipulation contains the following proposed conditions designed to protect the wetlands at the Project site. These conditions address the need for CCSP to obtain a CUD for certain activities and include a requirement that CCSP submit a Planting and Vegetation Management Plan that will address potential impacts to wetlands associated with clearing for shade removal. In addition, due to the proximity of the pedestrian easement to the Class Two wetlands, the Stipulation requires ANR approval of the location of the pedestrian easement.² I recommend that the Board include these conditions in a CPG issued to CCSP.

CCSP shall not undertake any physical improvements to the portion of the Project site that will be covered by any pedestrian easement granted to the City of South Burlington (as depicted on the revised site plan dated June 23, 2010), aside from improvements to the site's access road as described in CCSP's prefiled testimony. In any such easement, CCSP shall include language that requires ANR approval prior to the improvements to the land that is subject to the pedestrian easement (aside from the access road, which shall be governed by this Order and any Conditional Use Determinations ("CUD") granted by ANR).

CCSP shall obtain any necessary CUDs from ANR for work in Class Two wetlands or wetland buffers prior to commencing construction in any areas that require CUDs. The existing site access road will require structural improvements in order to support heavy construction vehicles during the construction period. Because a CUD will be required for those planned improvements, CCSP shall obtain a CUD for that work prior to using the existing site access road for heavy construction vehicles. To the extent that CCSP can use the existing site access road without undertaking the improvements that require a CUD, CCSP may access the site to undertake any work that does not require a CUD.

CCSP shall submit a Planting and Vegetation Maintenance Plan to ANR for review, and shall make good faith efforts to obtain ANR's concurrence with the plan, prior to submission to the Board for final review and approval. The Plan shall be finalized and approved by the Board before the Project becomes operational.

2. Tr. 8/13/10 at 39-40 (Dillon).

Sufficiency of Water and Burden on Existing Water Supply

[10 V.S.A. §§ 6086(a)(2)&(3)]

64. The Project will not have an adverse impact on any existing water supply. Any water required for construction or operation of the Project will be brought to the site. Cooke pf. at 6.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

65. The Project will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result. This finding is supported by findings 66 through 68, below. Cooke pf. at 7.

66. The Project will follow ANR-approved practices for managing stormwater during construction, pursuant to the Construction Stormwater National Pollutant Discharge Elimination System General Permit. Cooke pf. at 7-8; exh. SBSF-PM/DG-15.

67. The construction-phase stormwater discharge permit requires a site-specific ESPC plan. Crary pf. at 6-7; exh. SBSF-PM/DG-15.

68. The Project is not expected to significantly alter the hydrology of the site, due to the small amount of new impervious surface and the construction-phase management practices implemented through the stormwater permit. Consequently, the Project will not have an undue adverse impact on soils or the ability of the land to hold water. Cooke pf. at 8.

Transportation Systems

[10 V.S.A. § 6086(a)(5)]

69. The Project will not cause unreasonable congestion or unsafe conditions with respect to transportation systems. This finding is supported by findings 70 through 73, below.

70. Access to the Project site is from the existing access road off of the end of Dubois Drive, a dead-end road. Michael/Goldsmith pf. at 22; exh. SBSF-AC-2.

71. Project operations and maintenance will typically require no more than one additional passenger vehicle trip per week. However, there may be occasions when there will be multiple trips per day, due to the need to replace or repair equipment. Michael/Goldsmith pf. at 22-23.

72. The solar panels, mounting systems, conduits, and inverters can be transported to the Project site using standard delivery methods, without requiring oversize or overweight loads. Delivery of equipment will likely occur over 12 to 16 weeks and require approximately 80 truck trips. At the busiest times, there will be about two to three trips per day. All deliveries will take place between 8 a.m. and 3 p.m. on weekdays; CCSP will post a flagger to assist in traffic safety if needed. Michael/Goldsmith pf. at 23; Michael/Goldsmith supp. pf. at 11.

73. There are expected to be approximately 16 trips per day associated with passenger vehicle traffic due to construction crews and other personnel. CCSP will ensure that all Project-related vehicles comply with the speed limits on Dubois Drive. Additionally, there will be no Project-related parking on Dubois Drive, including at the cul-de-sac. Michael/Goldsmith pf. at 23; Michael/Goldsmith supp. pf. at 10-11.

Educational Services

[10 V.S.A. § 6086(a)(6)]

74. The Project will not cause an unreasonable burden on educational services. No full-time permanent jobs will be created as a result of the Project, and therefore no new school-aged children will enter the local school system. Michael/Goldsmith pf. at 24; exh. SBSF-PM/DG-7a.

Municipal Services

[10 V.S.A. § 6086(a)(7)]

75. The Project will not cause an unreasonable burden on the City of South Burlington. The Project will not require any municipal water or sewer facilities, nor any unique fire, police, or rescue services. In addition, the Project will conform to applicable electrical and fire codes. Michael/Goldsmith pf. at 24; exh. SBSF-PM/DB-7.b.

Aesthetics, Historic Sites
and Rare and Irreplaceable Natural Areas

[10 V.S.A. § 6086(a)(8)]

76. The proposed Project will not have an undue adverse effect on the scenic or natural beauty, aesthetics, historic sites or rare and irreplaceable natural areas. This finding is supported by findings 77 through 84, below.

77. The Project will have limited visual impacts beyond the Project site and will not be extensively visible. Raphael pf. at 4; exh. SBSF-DR-2.

78. The Project site is located adjacent to an industrial/commercial area to the north and a residential area to the west. The Project is well screened from the residential area by existing vegetation. Raphael pf. at 4; exh. SBSF-DR-2.

79. The solar panels will be dark blue in color and will have a non-reflective coating to maximize solar absorption. The existing screening and the location of the solar arrays will limit, if not eliminate, any off-site sun reflection from the panels. Raphael pf. at 4; Michael/Goldsmith pf. at 25; exh. SBSF-DR-2 at 2.

80. CCSP will use motion-activated security lighting at the site in the form of low-wattage directional light emitting diodes (LEDs), which will be shielded so that the light is directed downwards and toward the center of the Project. The lighting will comply with the Vermont Outdoor Lighting Guide. Michael/Goldsmith supp. pf. at 10-11.

81. The Project will not result in an undue adverse impact to the aesthetics and scenic beauty of the area for the following reasons: (1) the Project will not be shocking or offensive to the average person due to its low profile and the fact that it will not be readily visible from any surrounding vantage points; (2) the Project does not violate any clearly written community standard; and (3) the Petitioner has taken reasonably available mitigation steps to reduce the Project's aesthetic impacts, including the retention of existing screening around the Project site. Raphael pf. at 5-6; exh. SBSF-DR-2.

82. The only state-listed historic structures within one mile of the Project will not have any view of the Project, accordingly, there will be no adverse impact on these structures. The

Vermont Division for Historic Preservation has concurred that the Project will not have an undue adverse impact on historic resources. Raphael pf. at 6-7; exh. SBSF-PM/DG-8.

83. The Division for Historic Preservation has stated that the Project will not create an undue adverse impact on archaeological resources, provided that the following recommendations are followed:

(1) The petitioner, in consultation with the Vermont Division for Historic Preservation (VDHP), shall identify all archaeologically sensitive areas within the project area as not-to-be disturbed archeological buffer zones. The archeological buffer zones shall be marked on all relevant project plans and will be modified to exclude non-sensitive areas as the archeological work progresses.

(2) Topsoil removal, grading, scraping, cutting, filling, stockpiling, logging or any other type of ground disturbance is prohibited within the buffer zones prior to conducting all appropriate archeological studies. The ground disturbance restriction does not include plowing and harrowing activities necessary to prepare the buffer zones for the Phase I archeological work.

(3) Archeological studies to identify or evaluate sites will be carried out by a qualified consulting archeologist in all archeologically sensitive areas to be impacted by the proposed Project. The archeological studies will be scheduled accordingly so that mitigation measures that may be necessary can be satisfactorily planned and accomplished prior to construction.

(4) All archeological studies and assessments must be conducted by a qualified consulting archeologist and must follow the VDHP Guidelines for Conducting Archeological Studies in Vermont. The petitioner's archeological consultant must submit any scope of work to the VDHP for review and approval.

(5) Archeological sites within the Project area will not be impacted until any necessary mitigation measures have been carried out. Mitigation may include but is not limited to further site evaluation, data recovery, redesign of one or more proposed Project components, or modification of the buffer zone boundaries or the specific conditions that refer to the same.

(6) Proposed mitigation measures will be discussed with and approved by the Division prior to implementation, and a copy of all mitigation proposals will be filed with the Public Service Board (PSB). The archeological studies will result in one or more final reports, as appropriate, that meet the VDHP Guidelines for Conducting Archeological Studies in Vermont. Copies will be submitted to both the VDHP and to the PSB.

CCSP has agreed to follow the above recommendations. Michael/Goldsmith pf. at 25; exh. SBSF-PM/DG-8.

84. The Project will not have an undue adverse impact on any rare and irreplaceable natural areas. Two natural communities within and close to the Project parcel are considered significant by the Vermont Non-Game and Natural Heritage Program ("NNHP"): a Red Maple-Black Ash Seepage Swamp, occurring mostly west of the Project site; and a Clayplain Forest along the southern portion of the Project site. The Project incorporates a minimum 50-foot buffer from the Clayplain Forest and a minimum 100-foot buffer from the Red Maple-Black Ash Seepage Swamp. The Project site access road is located within these buffers; however, it will not cause an adverse impact as the road will utilize the existing access corridor. Crary pf. at 19-20.

Necessary Wildlife Habitat and Endangered Species

[10 V.S.A. § 6086(a)(8)(A)]

85. The proposed project will not have an undue, adverse impact on any necessary wildlife habitat and endangered species. This finding is supported by findings 86 through 89, below.

86. There are no known listed, threatened, or endangered species at the Project site, nor is there any necessary wildlife habitat present. Crary pf. at 17.

87. The Project parcel supports habitat for local wildlife, as the parcel is undeveloped and retains a diversity of habitat niches. However, there is nearby residential and commercial development, as well as frequent pedestrian and domestic dog use of the area, factors that decrease the suitability of the area for wildlife habitat. Crary pf. at 17.

88. The bottom of the security fence will be set at least four inches, and up to six inches, above ground level to allow for wildlife passage. Michael/Goldsmith supp. pf. at 4.

89. The Project will not significantly alter the existing value of the open field for wildlife function as the vegetative cover and maintenance regime will not be significantly changed from the existing conditions. Crary pf. at 18.

Discussion

The Stipulation includes the following language: "In order to protect nesting grassland birds, CCSP shall not mow or hay the Project site between the dates of April 15 and August 1 of

each year, provided, however, that CCSP may mow or hay the site at any time if such activity is for agricultural purposes." At the technical hearing CCSP stated that, for maintenance purposes, mowing is not required and there is very little economic benefit to CCSP to pursue multiple cuts at the site.³

Given that a prohibition on mowing during certain times of the year will protect nesting grassland birds, and that Project operations are not hindered by such a restriction, I recommend that the Board include as a condition of the CPG that "In order to protect nesting grassland birds, CCSP shall not mow or hay the Project site between the dates of April 15 and August 1 of each year." There does not appear to be sufficient rationale to allow mowing between April 15 and August 1 simply because such actions may be agricultural in nature.⁴

Development Affecting Public Investments

[10 V.S.A. § 6086(a)(9)(K)]

90. The proposed Project will not unnecessarily or unreasonably endanger the public or quasi-public investment in any public facilities, services or lands, or materially jeopardize or interfere with the function, efficiency, or safety of the public's use or enjoyment of or access to any such facility, service or lands. There is conserved land to the east of the Project, in the Muddy Brook stream corridor. The Project will have no material effect on the functional, aesthetic, or recreational qualities of the public investment. Raphael pf. at 8-9.

Least-Cost Integrated Resource Plan

[30 V.S.A. § 248(b)(6)]

91. CCSP is not a distribution utility and is not required to have an integrated resource plan. Michael/Goldsmith pf. at 26.

3. Tr. 8/13/10 at 13-14 (Michael).

4. At the technical hearing, counsel for CCSP stated that it would not seek the opportunity to comment on the Proposal for Decision if the condition were modified. Tr. 8/13/10 at 14-15 (Raubvogel).

Compliance with Electric Energy Plan

[30 V.S.A. § 248(b)(7)]

92. The proposed project complies with the *Vermont Electric Plan* (the "Plan"), because it supports the Plan's recommendations that the State should evaluate "financial incentive mechanisms to foster renewable energy deployment," and "other creative solutions to promoting the commercialization and use of clean, renewable technologies." The proposed project promotes the Plan's goals to diversify supply resources, maintain appropriate contribution from renewable resources, and reduce Vermont's dependence on fossil fuels and other resources that are subject to dramatic price changes and possible supply disruptions. Michael/Goldsmith pf. at 26-27.

93. The Department filed a determination on September 13, 2010, that the proposed project is consistent with the *Vermont Electric Plan*, in accordance with 30 V.S.A. § 202(f).

Outstanding Resource Waters

[30 V.S.A. § 248(b)(8)]

94. The proposed project will not affect any outstanding resource waters of the State, as there are no waters in the vicinity of the proposed project that have been designated as outstanding resource waters. Crary pf. at 4-5; exh. CCPS-AC-2.

Waste to Energy Facilities

[30 V.S.A. § 248(b)(9)]

This criterion is not applicable to the proposed project.

Existing or Planned Transmission Facilities

[30 V.S.A. § 248(b)(10)]

95. The proposed project will be served economically by existing or planned transmission facilities without undue adverse impact on Vermont utilities or customers. This finding is supported by findings 20 through 23, above, and 96 and 97, below.

96. The Project will interconnect with GMP's existing 12.47 kV distribution line located on Meadowland Drive. Michael/Goldsmith supp. pf. at 5.

97. The costs of any modifications to the electrical system will be borne by CCSP. Michael/Goldsmith pf. at 27.

Decommissioning Plan

98. At the time the Project ceases to operate, CCSP will perform decommissioning, including removal of the solar panels, support structures, trackers, underground electrical lines, inverters, transformers, concrete pads, and fencing. Stipulation at 3.

99. After the Project is decommissioned, CCSP will reclaim the site by tilling and restoring the field to its present condition, and will place \$5,000 in escrow for this specific reclamation activity not later than 30 days after the Board issues a CPG. Michael/Goldsmith supp. pf. at 6.

Discussion

The Stipulation provides the following proposed condition:

At the time the Project ceases to operate, CCSP will perform decommissioning, including removal of the solar panels, support structures, trackers, underground electrical lines, inverters, transformers, concrete pads, and fencing. Prior to operation of the Project, Petitioner shall submit to the Board for review and approval a plan for the creation of a Decommissioning Fund. The Decommissioning Fund shall be secured by cash, bond, letter of credit, or other financial mechanism that is held by a third party and would be unaffected should Petitioner become bankrupt or otherwise cease to exist. Petitioner may build the Fund over time such that it has sufficient funds to perform decommissioning after twelve years of operation.

At the technical hearing, I raised the issue of this provision's consistency with the Board's precedent regarding decommissioning generation projects. CCSP maintained that the proposed condition was reasonable in light of the relatively minor impacts associated with the Project and the salvage value associated with the photovoltaic panels.⁵ Counsel for CCSP stated that it recognized that the issue had been presented before the Board in another Section 248 case involving a proposed solar project, and that CCSP would not need to comment on this issue if I

5. Tr. 8/13/10 at 29-37 (Michael).

proposed a decommissioning condition consistent with Board precedent, but different from that contained in the Stipulation.⁶

The Board recently stated in Docket 7618, *Petition of EOS Ventures, LLC*:

The purpose of the [Decommissioning] Fund is to ensure that sufficient funding will be available to restore the site after a project ceases operation, whether that occurs at the end of its expected operational life or earlier, if the Project is abandoned due to financial, operational, or other difficulties. To allow construction to occur without the Fund in place would fail to provide this financial assurance for site restoration should the Project be prematurely abandoned, thus defeating the very purpose of the Fund. In light of these considerations, we adopt the decommissioning condition proposed in the PFD, which requires EOS to have a Fund in place prior to proceeding with construction.⁷

Given the Board's decision in Docket 7618, I recommend that the Board impose the following condition with respect to a decommissioning requirement:

Prior to commencement of construction, CCSP shall submit to the Board for review and approval a plan for decommissioning that includes a detailed estimate of the projected decommissioning costs and a plan for the creation of a Fund. CCSP shall ensure that the Fund (1) is backed by an "irrevocable standby" Letter of Credit or another appropriate financial security, (2) increases over time to account for inflation, and (3) is bankruptcy-remote, to protect it from creditor claims in the event the proposed project encounters financial difficulties. Parties shall have one week, from the date the plan is filed with the Board, to file any comments. Project construction may not commence until the Board approves the decommissioning plan and fund mechanism.

This condition is almost identical to that imposed by the Board in Docket 7618.

In addition, the Stipulation included the following condition regarding reclamation of the site after decommissioning: "After the Project is decommissioned, CCSP will reclaim the site by tilling and restoring the field to its present condition, and will place \$5,000 in escrow for this specific reclamation activity not later than 30 days after the Board issues a CPG." If the Board accepts my proposal for a decommissioning condition, it appears that a separate decommissioning fund for tilling and restoring the field to its present condition would not be

6. Tr. 8/13/10 at 37-38 (Raubvogel).

7. Docket 7618, Order of September 8, 2010, at 24-25 (footnote omitted).

necessary. I recommend that the Board not require a separate decommissioning fund for such activities, although CCSP may elect to create one if it so chooses.

Renewable Energy Credits

100. Under the SPEED standard-offer program, CCSP is required to sell both the proposed project's energy and attributes, including RECs, to the SPEED Facilitator. Michael/Goldsmith supp. pf. at 7.

101. The Department has requested that CCSP accept a CPG condition regarding the representations that CCSP may make regarding the Project's renewable energy attributes. Michael/Goldsmith supp. pf. at 6-7.

102. CCSP, in response to the Department's request, agrees to the following:

Petitioner acknowledges that it has sold all of the products directly attributable to the renewable production of electricity at the Project to a third party. As such, Petitioner agrees that it will not cause any renewable energy credits (RECs) or other environmental attributes directly attributable to the Project's electrical production to be double counted. Double counting occurs when the disaggregated attributes associated with a single Mwh of generation are ultimately sold to, or claimed by, more than one consumer, or by the producer. Petitioner's representation that it produces energy from a renewable resource, and that the production of energy from a renewable resource has environmental or energy security benefits which the producer sells as RECs, shall not constitute double counting.

Stipulation at 3.

Discussion

As part of the Stipulation and at the request of the Department, CCSP has agreed that, if the petition is granted, the CPG should include requirements with regard to ASF's future representations regarding the renewable attributes associated with the proposed project, as specified in finding 102, above.

Consistent with CCSP's standard-offer contract and Board Orders, CCSP will transfer the ownership of all renewable attributes associated with the proposed project to the SPEED Facilitator. Because the renewable attributes of all non-methane standard-offer projects will be transferred to the SPEED Facilitator and consistent with the Board's approval of previous

standard-offer projects,⁸ I conclude that this issue is more appropriately addressed in Docket 7533, establishing a standard-offer program for qualifying SPEED resources.⁹ On August 19, 2010, the Department filed a petition in Docket 7533, requesting that the Board include similar conditions in all CPGs for standard-offer projects.

Therefore, I recommend that the CPG should not include any additional, specific requirements regarding the transfer of the renewable attributes associated with the proposed project. However, as identified in finding 102, above, CCSP has agreed to a requirement regarding representation of the renewable attributes of the Project. I am recommending that the Board's Order and CPG require that construction, operation, and maintenance of the proposed project shall be in accordance with the plans and evidence as submitted in these proceedings. Accordingly, I expect that CCSP will abide by these disclosure requirements related to the transfer of renewable attributes. I also recommend that the Board include a condition requiring CCSP to comply with any disclosure requirements established in other proceedings and Board rules.

III. DISCUSSION AND CONCLUSION

CCSP has provided sufficient evidence to demonstrate that the proposed project complies with Section 248 criteria. I recommend that the Board issue a CPG, with conditions, authorizing construction of the proposed project.

On June 25, 2010, CCSP, the Department, ANR, and South Burlington filed a Stipulation and revised proposed findings of fact and order in which all the parties agreed that the Board should issue a CPG with conditions. The parties waived their rights under 3 V.S.A. § 811 to review and comment upon a proposal for decision, and to present oral argument, provided that the Proposal for Decision is substantially similar to that attached to the Stipulation. Given that this Proposal for Decision is substantially consistent with the proposed findings and Stipulation, I am not circulating the Proposal for Decision to the parties for their review and comment.

8. See Docket 7614, *Brattleboro Carbon Harvest*, Order of July 13, 2010, at 16.

9. On September 30, 2009, the Board issued an Order, in Docket 7533, establishing a standard-offer program. On October 16, October 28, and December 31, 2009, and June 24, 2010, the Board issued Orders addressing certain implementation issues.

Based upon the evidence in the record, I conclude that the proposed project, with the conditions identified below:

- (a) will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, and the recommendations of the municipal legislative bodies;
- (b) is required to meet the need for present and future demand for service which could not otherwise be provided in a more cost-effective manner through energy conservation programs and measures and energy efficiency and land management measures;
- (c) will not adversely affect system stability and reliability;
- (d) will result in an economic benefit to the state and its residents;
- (e) will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment and the public health and safety, with due consideration having been given to the criteria specified in 10 V.S.A. § 1424a(d) and §§ 6086(a)(1) through (8) and (9)(K);
- (f) is consistent with the principles of least-cost integrated resource planning;
- (g) is in compliance with the electric energy plan approved by the Department under § 202(f) of Title 30 V.S.A.;
- (h) does not involve a facility affecting or located on any segment of the waters of the State that has been designated as outstanding resource waters by the Water Resources Board;
- (i) does not involve a waste-to-energy facility; and
- (j) can be served economically by existing or planned transmission facilities without undue adverse effect on Vermont utilities or customers.

I recommend that the Board approve the proposed Project and issue a CPG for construction of the proposed Project with the conditions set forth in the proposed Order and CPG, below.

Dated at Montpelier, Vermont, this 9th day of September, 2010.

s/ Edward McNamara, Esq.
Edward McNamara, Esq. - Hearing Officer

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board ("Board") of the State of Vermont that:

1. The findings, conclusions, and recommendations of the Hearing Officer are adopted.
2. The proposed installation and operation of a solar electric generation facility by Chittenden County Solar Project, LLC ("CCSP") in the City of South Burlington, Vermont, will promote the general good of the State of Vermont in accordance with 30 V.S.A. Section 248, and a certificate of public good to that effect shall be issued.
3. Construction, operation, and maintenance of the proposed Project shall be in accordance with the plans and evidence as submitted in these proceedings. Any material deviation from these plans must be approved by the Board.
4. The proposed Project is hereby certified as a Sustainably Priced Energy Enterprise Development project (SPEED).
5. CCSP shall comply with any applicable requirements regarding the disclosure of renewable attributes that are established in other proceedings, including Docket 7533, and Board Rules.
6. Prior to commencement of construction, CCSP shall submit the Green Mountain Power Corporation System Impact Study to the Board for approval, after review and comment by the Department of Public Service. CCSP may seek permission from the Board to commence construction activities prior to approval of the System Impact Study, provided that the construction activities do not involve the installation of any electrical equipment related to the interconnection of the Project with Green Mountain Power Corporation's distribution system.
7. CCSP shall pay the entire cost of the distribution system upgrades related to the Project.
8. All construction activities shall comply with the site-specific Erosion Prevention and Sediment Control Plan developed for the proposed project.
9. Prior to commencement of construction, CCSP shall submit to the Board for review and approval a plan for decommissioning that includes a detailed estimate of the projected decommissioning costs and a plan for the creation of a Fund. CCSP shall ensure that the Fund

(1) is backed by an "irrevocable standby" Letter of Credit or another appropriate financial security, (2) increases over time to account for inflation, and (3) is bankruptcy-remote, to protect it from creditor claims in the event the proposed project encounters financial difficulties. Parties shall have one week, from the date the plan is filed with the Board, to file any comments. Project construction may not commence until the Board approves the decommissioning plan and fund mechanism.

10. Prior to commencement of construction, CCSP shall obtain all necessary permits and approvals. Construction, operation, and maintenance of the proposed project shall be in accordance with such permits and approvals, and with all other applicable regulations, including those of the Agency of Natural Resources ("ANR").

11. CCSP shall not undertake any physical improvements to the portion of the Project site that will be covered by any pedestrian easement granted to the City of South Burlington (as depicted on the revised site plan dated June 23, 2010), aside from improvements to the site's access road as described in CCSP's prefiled testimony. In any such easement, CCSP shall include language that requires ANR approval prior to the improvements to the land that is subject to the pedestrian easement (aside from the access road, which shall be governed by this Order and any Conditional Use Determinations ("CUD") granted by ANR).

12. CCSP shall obtain any necessary CUDs from ANR for work in Class Two wetlands or wetland buffers prior to commencing construction in any areas that require CUDs. The existing site access road will require structural improvements in order to support heavy construction vehicles during the construction period. Because a CUD will be required for those planned improvements, CCSP shall obtain a CUD for that work prior to using the existing site access road for heavy construction vehicles. To the extent that CCSP can use the existing site access road without undertaking the improvements that require a CUD, CCSP may access the site to undertake any work that does not require a CUD.

13. CCSP shall submit a Planting and Vegetation Maintenance Plan to ANR for review, and shall make good faith efforts to obtain ANR's concurrence with the plan, prior to submission to the Board for final review and approval. The Project may not become operational until the Plan has been finalized and approved by the Board.

14. In order to protect nesting grassland birds, CCSP shall not mow or hay the Project site between the dates of April 15 and August 1 of each year.

Dated at Montpelier, Vermont, this 15th day of September, 2010.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/ David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: September 15, 2010

ATTEST: s/ Susan M. Hudson
Clerk of the Board

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.